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10 Attorneys for Plaintiff, MEDEANALYTICS, INC.

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 MEDEANALYTICS, INC.,
14 a Delaware Corporation,

15 Plaintiff,

16 vs.

17 FEDERAL INSURANCE COMPANY,
18 an Indiana Corporation,

19 Defendant.

CASE NO.

**COMPLAINT FOR BREACH OF
CONTRACT (DEFENSE COSTS);
BREACH OF CONTRACT
(SETTLEMENT COSTS);
TORTIOUS BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING; AND
FOR PUNITIVE DAMAGES**

DEMAND FOR JURY TRIAL

20
21 Plaintiff MedeAnalytics, Inc. ("Mede") respectfully alleges as follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over the subject matter of this complaint
24 pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship
25 between the parties and the amount in controversy exceeds the sum of \$75,000,
26 exclusive of interest and costs.

27 2. The matter in controversy is between citizens of different states. The
28 Plaintiff, Mede, is diverse of citizenship from the Defendant, Federal Insurance

1 Company ("Federal"). Mede was incorporated in Delaware and has its principal place
 2 of business in California. Federal, on the other hand, was incorporated in Indiana and
 3 has its principal place of business in New Jersey.

4 3. Venue is proper in this District under 28 U.S.C. §1391(b)(1), (c)(2) and (d)
 5 in that Federal is subject to personal jurisdiction in this District and therefore is deemed
 6 to reside here. Venue is also proper under 28 U.S.C. §1391(b)(2) because the contracts
 7 of insurance which are the subject of this action were entered into and were to be
 8 performed within this District, and the underlying events giving rise to Mede's claim for
 9 coverage occurred within this District.

10 **INTRADISTRICT ASSIGNMENT**

11 4. This action arises in Alameda County because it arises out of the breach
 12 of certain contracts of insurance which were entered into, and were to be performed,
 13 within Alameda County. Accordingly, this action should be assigned to the Oakland
 14 Division.

15 **THE PARTIES**

16 5. Plaintiff Mede is a corporation duly organized and existing under the laws
 17 of the State of Delaware. Mede is a healthcare financial performance analytics software
 18 pioneer headquartered in Emeryville, California.

19 6. Defendant Federal is, and at all relevant times has been, a corporation
 20 organized and existing under the laws of the State of Indiana, duly licensed to do
 21 business in the State of California.

22 **GENERAL ALLEGATIONS**

23 **A. Federal Insured Mede Against Lawsuits Seeking Damages for Injury** 24 **Caused by Libel and Slander**

25 7. Federal issued both primary and excess umbrella policies to Mede.

26 8. The Federal Primary Policies - Federal issued consecutive primary liability
 27 insurance policies to Mede during the period from December 31, 2012 to December 31,

28 ///

1 2014 (the “Primary Policies”). Both of these Primary Policies bore policy number 3600-
2 42-62 PLE.

3 9. The Primary Policies promised Mede a defense and indemnity against third-
4 party lawsuits alleging claims of “personal injury.” Each of the Primary Policies
5 provided a limit of liability for “personal injury” claims of \$1 million with defense costs
6 to be payable in addition to this limit.

7 10. “Personal injury” was defined to include:

8 [I]njury . . . caused by an offense of:

9 * * * *

10 D. electronic, oral, written or other publication
11 of material that: libels or slanders a person
12 or organization (which does not include
13 disparagement of goods, products,
14 property or services);

15 11. The duty-to-defend provision stated as follows:

16 [W]e will have the right and duty to defend the
17 **insured** against a **suit**, even if such **suit** is false,
18 fraudulent or groundless.

19 12. The Federal Excess Policies - Federal also issued consecutive
20 Excess/Umbrella policies to Mede during the period from December 31, 2012 to
21 December 31, 2014 (the “Excess Policies”). Both Excess Policies bore policy number
22 7988-96-27 and had liability limits of \$15 million. The Excess Policies followed the
23 terms and conditions of the Primary Policies described above, and apply to that part of
24 loss which exceeds the relevant Primary Policy’s applicable limits.

25 13. Mede paid the full premiums due and has performed all conditions
26 required of it under the Federal Primary and Excess Policies.

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B. Mede Was Sued For, *Inter Alia*, Making Disparaging Statements About Another Company While Attempting To Solicit Its Employees

14. Mede contractors, Zlagoda Tekhnologii (“Zlagoda”) and Stella Systems, LLC (“Stella”) (collectively “Stella/Zlagoda”), are privately held companies operating in Kharkiv, Ukraine. For nearly ten years, from 2004 to 2014, Mede and Stella/Zlagoda had a relatively productive relationship whereby Stella/Zlagoda provided off-shore development services to Mede.

15. On February 26, 2014, Stella/Zlagoda filed a lawsuit in the United States District Court for the Northern District of California entitled *Stella Systems, LLC et al. v. MedeAnalytics, Inc.*, and assigned Case No. 3:14-cv-00880 LB (hereafter “*Stella v. Mede*”). On April 28, 2014, Stella/Zlagoda filed a First Amended Complaint (“FAC”).

16. The FAC in *Stella v. Mede* alleged that for the previous ten years, Stella/Zlagoda had provided information technology services for Mede’s end-user client hospitals and health care providers. The FAC further alleged that since April 2013, Mede had taken certain actions designed to drive Stella/Zlagoda out of business, including wrongfully soliciting Stella’s employees.

17. For example, it was alleged that in order to create employee dissatisfaction with Stella, “MEDE, its officers, directors, agents, and employees, began to make disparaging comments about STELLA and its directors and officers” (Underscore added). The FAC alleged that approximately 38 former Stella employees currently work for Mede and that Mede “continues to actively solicit STELLA employees to work for MEDE via Skype.”

18. The FAC described the damage allegedly caused by Mede’s alleged actions, including the solicitation of employees, as follows:

43. MEDE intentionally solicited STELLA’s employees, knowing that STELLA’s employees were essential to STELLA in providing information technology services in the areas of business

1 intelligence and financial analytics. MEDE acted
 2 unreasonably and in bad faith towards Plaintiffs
 3 through the following acts meant to harm Plaintiff's
 4 businesses: (i) MEDE disparaged Plaintiffs and
 5 their officers and directors to Plaintiffs' employees;
 6 (Underscore added).

7 19. The FAC asserted five causes of action. The first was for "Breach of
 8 Written Contract" and alleged that Stella was an intended third party beneficiary of an
 9 Agency Agreement between Zlagoda and Mede. It was alleged that Mede breached a
 10 non-solicitation provision in the Agency Agreement.

11 20. The second cause of action was for "Breach of the Covenant of Good
 12 Faith and Fair Dealing," which again alleged that Stella was an intended third party
 13 beneficiary of the Agency Agreement. It was alleged that Mede's actions unreasonably
 14 interfered with Stella/Zlagoda's right to receive the benefits of the Agency Agreement
 15 by, *inter alia*, soliciting Stella's employees "by disparaging STELLA and its managers
 16 and directors"

17 21. The third, fourth and fifth causes of action were for, respectively,
 18 "Intentional Interference with Contract," "Intentional Interference with Prospective
 19 Economic Advantage," and "Negligent Interference with Prospective Economic
 20 Relations." These "interference" causes of action alleged that Mede had disrupted
 21 Stella's employment relationships by raiding and soliciting Stella's employees. Each of
 22 the causes of action incorporated all preceding paragraphs of the FAC.

23 **C. Federal Wrongfully Denies A Duty to Defend Mede**

24 22. On April 29, 2014, Mede tendered the FAC in *Stella v. Mede* to Federal for
 25 a defense.

26 23. On May 28, 2014, having undertaken no meaningful investigation of the
 27 allegations made against Mede, Federal responded by disclaiming that it owed any duty
 28 to defend. Although Federal acknowledged that the FAC alleged "disparagement," it

1 nevertheless denied it owed Mede a duty to defend on the ground that the “allegations
2 do not arise to the element of libel and/or slander within the definition of **Personal**
3 **Injury** and appear to arise out of the alleged breach of the Agency/Services
4 Agreement.”

5 24. In reality, as Federal was fully aware, the FAC’s allegation of
6 “disparagement” created a clear potential for covered liability under California law.
7 Moreover, this potential liability was not eliminated by either of the exclusions cited in
8 Federal’s denial letter, as Federal itself acknowledged by merely stating that these
9 exclusions “may” be applicable in precluding coverage.

10 25. Federal’s failure to conduct any meaningful investigation of the allegations
11 made in *Stella v. Mede*, and then disclaiming coverage based upon the uncertain
12 application of policy exclusions, was a clear violation of California insurance law.
13 Federal had a duty to investigate Mede’s defense tender and to assume Mede’s defense
14 immediately if any potential for covered liability existed under its policies. By failing in
15 both these regards, Federal breached the terms of its policies and its implied covenant
16 of good faith and fair dealing.

17 26. As a result of Federal’s wrongful failure to defend, Mede was forced to
18 fund its own defense and settlement of the lawsuit.

19 **FIRST CLAIM FOR RELIEF**

20 **Breach of Contract (Defense Costs)**

21 (By Mede against Federal)

22 27 Mede incorporates and re-alleges paragraphs 1 through 26 as though fully
23 set forth herein.

24 28. Mede performed all conditions, covenants, and promises required on its
25 part to be performed in accordance with the terms and conditions of the Policies.

26 29. Federal breached the terms of the Primary Policies by wrongfully denying
27 insurance benefits to Mede, which benefits are now due and payable in respect of all
28 amounts reasonably incurred by Mede in its defense of *Stella v. Mede*.

1 30. As a direct and proximate result of the above-mentioned breaches of
 2 contract by Federal, Mede has been damaged in an amount to be proven at trial. Said
 3 damages exceed the jurisdictional minimum required by this court.

4 **SECOND CLAIM FOR RELIEF**

5 **Breach of Contract (Settlement Costs)**

6 (By Mede against Federal)

7 31. Mede incorporates and re-alleges paragraphs 1 through 26 and 28 through
 8 30 as though fully set forth herein.

9 32. Mede performed all conditions, covenants, and promises required on its
 10 part to be performed in accordance with the terms and conditions of the Primary and
 11 Excess Policies.

12 33. Federal breached the terms of the Primary and Excess Policies by
 13 wrongfully denying insurance benefits to Mede, which benefits are now due and payable
 14 in respect of the consideration paid by Mede to settle *Stella v. Mede*.

15 34. As a direct and proximate result of the above-mentioned breaches of
 16 contract by Federal, Mede has been damaged in an amount to be proven at trial. Said
 17 damages exceed the jurisdictional minimum required by this court.

18 **THIRD CLAIM FOR RELIEF**

19 **Tortious Breach Of The Implied Covenant**

20 **Of Good Faith And Fair Dealing**

21 (By Mede against Federal)

22 35. Mede incorporates and re-alleges paragraphs 1 through 26, 28 through 30,
 23 and 32 through 34 as though fully set forth herein.

24 36. A relationship of trust and confidence was established between Federal on
 25 the one hand and Mede on the other hand, by virtue of Mede's status as an insured
 26 under the Primary and Excess Policies. Federal had a duty to deal fairly and in good
 27 faith with Mede in all matters between them.

28 ///

1 37. Mede is informed and believes and on that basis alleges that Federal
2 breached its duty of good faith and fair dealing when, among other things, it did the
3 following:

- 4 a. Wrongfully and unreasonably denied a duty to defend in
5 conscious disregard of California insurance law and
6 Mede's rights;
7 b. Failed to undertake any meaningful investigation of
8 Mede's defense tender;
9 c. Failed to defend Mede immediately upon learning facts
10 from *Stella v. Mede* which gave rise to a potential for
11 covered liability;
12 d. Failed to defend based upon uncertain application of
13 policy exclusions which is in direct contravention of
14 California law;
15 e. Failed to give at least as much consideration to the
16 welfare of Mede as it did to its own interests; and
17 f. Ignored California law in evaluating its defense
18 obligation.

19 38. As a direct and proximate result of the above-mentioned breaches of the
20 duty of good faith and fair dealing, Mede has been damaged in an amount to be proven
21 at trial. Said damages exceed the jurisdictional minimum required by this court.

22 39. Mede is informed and believes and on that basis alleges that Federal
23 denied insurance benefits to Mede despite knowing facts which clearly and
24 unambiguously demonstrated that it owed Mede a defense against *Stella v. Mede*.
25 Despite this knowledge, however, Federal made a calculated decision to wrongfully
26 deny Mede's claim for a defense, and gamble that its denial would go unchallenged.
27 Federal intentionally denied Mede's insurance claim despite knowledge of its coverage
28 obligations, and acted with an intent to enrich itself while injuring and harming Mede.

1 Federal's conduct in this matter satisfies the statutory grounds of "oppression, fraud or
2 malice" so as to justify an award of punitive damages in order to punish it and to deter
3 such conduct in the future.

4 **WHEREFORE**, Mede prays for judgment against Federal as follows:

5 1. For damages sustained as a result of the breaches and tortious breaches of
6 contract alleged herein, according to proof;

7 2. For attorney's fees including, but not limited to, an award of attorney's
8 fees pursuant to *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985);

9 3. For punitive damages pursuant to California Civil Code section 3294; and

10 4. For prejudgment interest, costs and expenses of suit, and such other and
11 further relief as the Court deems just and proper.

12
13 DATED: September 9, 2015

OSBORNE & NESBITT LLP

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Mede hereby demands a jury trial on all issues so triable.

DATED: September 9, 2015

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